

ASSEMBLY BILL

No. 1571

Introduced by Assembly Member Donnelly

February 1, 2012

An act to add Section 653.65 to the Penal Code, relating to human smuggling.

LEGISLATIVE COUNSEL'S DIGEST

AB 1571, as introduced, Donnelly. Crimes: human smuggling.

Under existing law, a person who deprives or violates the personal liberty of another with intent to effect or maintain specified felonies, or to obtain forced labor or services, is guilty of human trafficking, which is a felony.

Existing law makes it a misdemeanor for a person for compensation to knowingly make a false or misleading material statement or assertion of fact in the preparation of an immigration matter that is detrimentally relied upon by another. Existing law makes violations of these provisions liable for civil penalties.

This bill would make it a felony, punishable by imprisonment in a state prison for 16 months or 2 or 3 years, for a person to intentionally engage in the smuggling of a human being for profit or commercial purpose. The bill would make it a felony punishable by imprisonment in a state prison for 5, 7, or 10 years if the person being smuggled is under 18 years of age and is not accompanied by a family member over 18 years of age, or the offense involves the use of a weapon designed for lethal use, as defined. If the offense involves the use or threatened use of deadly physical force, the punishment would be 3, 5, or 7 years in a state prison and the defendant would not be eligible for suspension of sentence, probation, or other release from custody, except as specified,

until his or her sentence is served. The bill would impose a 10-year sentence enhancement for committing a specified offense, including a lewd or lascivious act, during the smuggling of a human being. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 653.65 is added to the Penal Code, to
2 read:
3 653.65. (a) Except as provided in subdivisions (b) and (c), it
4 is a felony punishable by imprisonment in a state prison for 16
5 months or 2 or 3 years for a person to intentionally engage in the
6 smuggling of a human being for profit or commercial purpose.
7 (b) It is a felony punishable by imprisonment in a state prison
8 for 5, 7, or 10 years if the human being who is smuggled is under
9 18 years of age and is not accompanied by a family member over
10 18 years of age or the offense involved the use of a weapon
11 designed for lethal use, including a firearm or an instrument that,
12 under the circumstances in which it is used or threatened to be
13 used, is readily capable of causing death or serious physical injury.
14 (c) It is a felony punishable by imprisonment in the state prison
15 for three, five, or seven years if the offense involves the use or
16 threatened use of deadly physical force, and the defendant shall
17 not be eligible for suspension of sentence, probation, or release
18 from confinement on another basis, except for participation in a
19 work release program, until the sentence imposed by the court is
20 served, the sentence is commuted, or a pardon is granted.
21 (d) It is a felony punishable by life in prison for a person to
22 violate subdivision (a) by smuggling a minor into or through this
23 state for the purpose of sexual slavery.
24 (e) A person who violates this section, and during the course of
25 that violation, commits an offense listed in subdivision (c) of

1 Section 667.61 shall receive an additional sentence of 10 years
2 imprisonment in the state prison for the violation of this section,
3 and the sentence under this section shall be consecutive to any
4 sentence for the offense listed in subdivision (c) of Section 667.61.

5 (f) Notwithstanding any other law, a peace officer may lawfully
6 stop a person who is operating a motor vehicle if the officer has
7 reasonable suspicion to believe the person is in violation of a civil
8 traffic law and this section.

9 (g) For purposes of this section, “family member” means a
10 person’s parent, grandparent, sibling, or another person who is
11 related to the person by consanguinity or affinity to the second
12 degree.

13 (h) For purposes of this section, “procurement of transportation”
14 means participation in or facilitation of transportation, including,
15 but not limited to, all of the following:

16 (1) Providing services that facilitate transportation including
17 travel arrangement services or money transmission services.

18 (2) Providing property that facilitates transportation, including,
19 but not limited to, a weapon, vehicle, or other means of
20 transportation or false identification, or the selling, leasing, renting,
21 or otherwise making available a drop house.

22 (i) For purposes of this section, “smuggling of a human being”
23 means the transportation, procurement of transportation, or use of
24 property or real property by a person or an entity that knows or
25 has reason to know that the person or persons transported or to be
26 transported are not United States citizens, permanent resident
27 aliens, or persons otherwise lawfully in this state or have attempted
28 to enter, entered, or remained in the United States in violation of
29 law.

30 (j) For purposes of this section, “drop house” means property
31 or real property that is used to facilitate the smuggling of a human
32 being.

33 SEC. 2. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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